

AMENDED IN ASSEMBLY APRIL 8, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 403

Introduced by Assembly Members Stone and Eggman

February 15, 2013

An act to amend Section 118286 of the Health and Safety Code, and to repeal and add Article 3.3 (commencing with Section 47115) of Chapter 1 of Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 403, as amended, Stone. Solid waste: home-generated sharps.

(1) Existing law requires a pharmaceutical manufacturer selling or distributing medication that is intended to be self-injected at home to submit, on an annual basis, to the Department of Resources Recycling and Recovery a plan supporting the safe collection and proper disposal of specified waste devices.

This bill would require a producer of home-generated sharps or a stewardship organization designated by the producer to submit a home-generated sharps stewardship plan by April 1, 2015, to the Department of Resources Recycling and Recovery. The bill would require the plan to provide for the development and implementation of a recovery program to reduce the generation of, and manage the end-of-life of, home-generated sharps, and to include specified elements, including provisions to meet unspecified minimum collection rates for the home-generated sharps subject to the plan.

The bill would provide for the review and approval of the plan by the department and would require the department, on January 1, 2016, or upon the date the first plan is approved, whichever is earlier, to post on its Internet Web site a list of producers for which the department has approved a plan. The bill would require a wholesaler, health care facility, retailer, or other distributor that distributes or sells home-generated sharps to monitor the department's Internet Web site to determine if the sale of a producer's home-generated sharps is in compliance with the bill. The bill would, as of 120 days after that posting, prohibit a producer or retailer from selling or offering for sale in this state home-generated sharps to a person in this state unless the producer of those home-generated sharps is in compliance with the bill's requirements.

The bill would require a producer or stewardship organization, by April 1, 2017, and every subsequent year thereafter, to prepare and submit to the department an annual report describing the activities carried out pursuant to the plan during the previous calendar year. The department would be required to review the report and would direct the department, if the annual report does not demonstrate the achievement of an unspecified collection rate increase, to require the program to take additional actions with regard to improving and increasing the number of home-generated sharps collection points, ensuring accessibility to those points, and providing additional education and outreach activities. The bill would authorize the department to exempt a producer or stewardship organization from the annual report requirements if the department determines that the collection rate for the home-generated sharps subject to a plan meets a 95% collection rate.

The bill would require a producer or stewardship organization submitting a plan to the department to pay the department an annual administrative fee in an amount that is sufficient to cover the department's full costs of administering and enforcing these provisions. The bill would require the department to deposit the fees in the Safe Sharps Disposal Account, which the bill would establish in the Integrated Waste Management Fund, and the department would be authorized to expend the moneys in that account, upon appropriation by the Legislature, to administer and enforce the bill's requirements.

The bill would require the department to enforce these provisions and would authorize the department to impose an administrative civil penalty on a person who violates the bill's requirements or on a producer or stewardship organization that does not achieve the unspecified minimum

collection rate. The department would be required to deposit all penalties collected into the Safe Sharps Disposal Penalty Account, which the bill would create in the Integrated Waste Management Fund, and the department would be authorized to expend the moneys in that account, upon appropriation by the Legislature, to enforce the bill's requirements.

~~The bill would also allow a producer who is subject to an approved plan and in compliance with the bill to bring a civil action to recover costs, damages, and fees from another producer for failure to comply with the bill's provisions.~~

(2) The existing Medical Waste Management Act, administered by the State Department of Public Health, prohibits a person from knowingly placing home-generated sharps waste in certain types of containers, requires that home-generated sharps waste be transported only in a sharps container, as defined in the act, or other container approved by the department or local enforcement agency, and requires that this waste be managed only at specified locations.

This bill would additionally allow home-generated sharps waste to be managed at a facility or collection point operated pursuant to an approved home-generated sharps stewardship plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*
3 *(a) The United States Environmental Protection Agency*
4 *estimates that about 9 million people in the United States currently*
5 *use disposable needles (sharps) at home to deliver medications to*
6 *treat a variety of diseases and conditions, including diabetes,*
7 *cancer, multiple sclerosis, migraines, and allergies. United States*
8 *households use more than 3 billion disposable needles and syringes*
9 *each year.*
10 *(b) Since 2008 it has been illegal in California for individuals*
11 *to throw away home-generated sharps. While the state banned*
12 *needles from trash disposal in 2008, there is still no consistent,*
13 *statewide program that is sustainably funded or has high levels*
14 *of effectiveness at collecting the majority of sharps disposed of*
15 *each year in California. As a result, thousands of pounds of*

1 *illegally disposed of sharps enter the municipal waste stream each*
2 *year, putting many people at risk of injury or infection.*

3 *(c) Sharps in the trash pose serious health risks to sanitation*
4 *workers, water treatment facility operators, and the general public.*
5 *In addition to the immediate risk of a needle stick injury, sharps*
6 *put individuals at risk of acquiring blood borne infectious diseases,*
7 *such as hepatitis or HIV. Individuals who suffer a needle stick*
8 *injury must receive immediate treatment and followup care,*
9 *including multiple lab tests and medications.*

10 *(d) When sanitation workers encounter sharps, productivity*
11 *suffers and costs increase. When workers sustain a needle stick*
12 *injury, the costs of care are borne by the waste management*
13 *company, the workers' compensation insurer, and ultimately,*
14 *taxpayers and ratepayers.*

15 *(e) It is the intent of the Legislature, in enacting the safe*
16 *home-generated sharps recovery program, as established by Article*
17 *3.3 (commencing with Section 47115) of Chapter 1 of Part 7 of*
18 *Division 30 of the Public Resources Code, to ensure affordable*
19 *and convenient sharps collection opportunities, which, in turn,*
20 *will help prevent the improper management of those sharps.*

21 **SECTION 1.**

22 **SEC. 2.** Section 118286 of the Health and Safety Code is
23 amended to read:

24 118286. (a) A person shall not knowingly place
25 home-generated sharps waste in any of the following containers:

26 (1) Any container used for the collection of solid waste,
27 recyclable materials, or greenwaste.

28 (2) Any container used for the commercial collection of solid
29 waste or recyclable materials from business establishments.

30 (3) Any roll-off container used for the collection of solid waste,
31 construction, and demolition debris, greenwaste, or other recyclable
32 materials.

33 (b) Home-generated sharps waste shall be transported only in
34 a sharps container, or other containers approved by the enforcement
35 agency, and shall only be managed at any of the following:

36 (1) A household hazardous waste facility pursuant to Section
37 25218.13.

38 (2) A "home-generated sharps consolidation point" as defined
39 in subdivision (b) of Section 117904.

(3) A medical waste generator's facility pursuant to Section 118147.

(4) A facility through the use of a medical waste mail-back container approved by the department pursuant to subdivision (b) of Section 118245.

(5) A facility or other home-generated sharps collection point operated pursuant to a home-generated sharps stewardship plan approved pursuant to Article 3.3 (commencing with Section 47115) of Chapter 1 of Part 7 of Division 30 of the Public Resources Code.

~~SEC. 2.~~

~~SEC. 3.~~ Article 3.3 (commencing with Section 47115) of Chapter 1 of Part 7 of Division 30 of the Public Resources Code is repealed.

~~SEC. 3.~~

~~SEC. 4.~~ Article 3.3 (commencing with Section 47115) is added to Chapter 1 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 3.3. Safe Home-Generated Sharps Recovery Program

47115. The Legislature finds and declares that the purpose of the safe home-generated sharps recovery program established by this article is to require the producers of injection devices to develop and implement a program to collect, transport, and process home-generated sharps, thereby reducing the costs, public health risks, and environmental impacts of the illegal and unsafe disposal of home-generated sharps in this state.

47116. For purposes of this article, the following terms have the following meanings:

(a) "Consumer" means a person that purchases or owns home-generated sharps.

(b) "Distributor" means a person that sells sharps or provides sharps for free to the general public for home use, which may include, but is not limited to, a retailer, a veterinarian, or a health clinic, health dispensary, or health facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code.

(c) "Home-generated sharps" means hypodermic needles, syringes with needles attached, pen needles, intravenous needles, or any other similar device intended to self-inject medication at home.

1 (d) “Program” means the program implementing an approved
2 home-generated sharps stewardship plan.

3 (e) “Retailer” means a person that sells home-generated sharps
4 in the state to a consumer. A sale includes, but is not limited to, a
5 transaction conducted through sales outlets, catalogs, or the Internet
6 or any other similar electronic means.

7 (f) “Stewardship organization” means a nonprofit organization
8 created by one or more producers that also includes at least four
9 additional members, who shall be representatives from each of the
10 following entities, but not more than one representative per entity,
11 to the extent that the other entities do not have a representative:

12 (1) A local government.

13 (2) A distributor.

14 (3) A solid waste hauler.

15 (4) A consumer health organization that will implement the
16 home-generated sharps stewardship plan.

17 (g) “Home-generated sharps stewardship plan” or “plan” means
18 a plan submitted by an individual producer or by a stewardship
19 organization on behalf of one or more producers.

20 (h) “Producer” means, with regard to home-generated sharps
21 that are sold, offered for sale, or distributed in the state, one of the
22 following:

23 (1) The person who manufactures home-generated sharps and
24 who sells, offers for sale, or distributes those home-generated
25 sharps in the state under that person’s own name or brand.

26 (2) If there is no person who sells, offers for sale, or distributes
27 home-generated sharps in the state under the person’s own name
28 or brand, the producer of the home-generated sharps is the owner
29 or licensee of a trademark or brand under which the
30 home-generated sharps are sold or distributed in the state, whether
31 or not the trademark is registered.

32 (3) If there is no person who is a producer of the sharps for
33 purposes of paragraphs (1) and (2), the producer of those sharps
34 is the person who imports the home-generated sharps into the state
35 for sale or distribution.

36 (i) “Stakeholder” means a person that is subject to, or will
37 participate in, the program that will be implemented by a proposed
38 home-generated sharps stewardship plan, including, but not limited
39 to, consumers, retailers, distributors, and health care providers and
40 facilities.

1 47117. (a) A producer or retailer shall not sell or offer for sale
2 in this state home-generated sharps to a person in this state unless
3 the producer of those home-generated sharps is in compliance with
4 this article.

5 (b) The sales prohibition specified in subdivision (a) shall apply
6 no earlier than 120 days after the date that the department posts
7 on its Internet Web site a list of producers for which the department
8 has approved a plan pursuant to paragraph (1) of subdivision (a)
9 of Section 47121.

10 (c) The sales prohibition specified in subdivision (a) shall apply
11 until the producer of the home-generated sharps is listed as
12 compliant on the department's Internet Web site or demonstrates
13 compliance pursuant to subdivision (b) of Section 47122.

14 47118. (a) On or before April 1, 2015, a producer or a
15 stewardship organization designated by the producer shall submit
16 a home-generated sharps stewardship plan to the department. The
17 home-generated sharps stewardship plan shall also be posted on
18 the Internet Web site of the producer or stewardship organization.
19 The plan shall provide for the implementation of the plan for each
20 calendar year, commencing January 1, 2016.

21 (b) The producer, group of producers, or stewardship
22 organization shall consult with stakeholders during the
23 development of the home-generated sharps stewardship plan,
24 including soliciting stakeholder comments and responding to
25 stakeholder comments, and shall document those comments in the
26 plan.

27 (c) The home-generated sharps stewardship plan shall provide
28 for the development and implementation of a recovery program
29 to reduce the generation of, and manage the ~~end-of-life~~ *end of life*
30 of, home-generated sharps, in an environmentally sound and
31 medically safe manner, including collecting, transporting,
32 processing, and disposing. The plan shall include, at a minimum,
33 all of the following elements:

34 (1) Contact information for all participating producers.

35 (2) Procedures for calculating the collection rate for the
36 home-generated sharps subject to the plan, which shall be
37 determined using, as a baseline, the number of home-generated
38 sharps collected by all producers subject to the plan, by weight,
39 during the 2014 calendar year, as compared to the average number

1 of home-generated sharps that are sold in the state during the 2013
2 calendar year by producers that are subject to the plan.

3 (3) Provisions to meet the minimum collection rate for the
4 home-generated sharps subject to the plan, which shall be
5 determined in the following manner:

6 (A) On and after January 1, 2016, the minimum collection rate
7 shall be _____ percent of the average number of home-generated
8 sharps that are sold in the state during the previous three calendar
9 years by the producers who are subject to the plan.

10 (B) On and after January 1, 2017, the minimum collection rate
11 shall be _____ percent of the average number of home-generated
12 sharps that are sold in the state during the previous three calendar
13 years by the producers who are subject to the plan.

14 (C) On and after January 1, 2018, and annually thereafter, the
15 collection rate shall be determined pursuant to Section 47120.

16 (4) (A) A demonstration of sufficient funding for the
17 home-generated sharps stewardship program proposed by the plan,
18 including a funding mechanism for securing and dispersing funds
19 to cover administrative, operational, and capital costs.

20 (B) The plan shall require the producer, and not consumers, to
21 be responsible for implementing the home-generated sharps
22 stewardship program.

23 (C) The plan shall require that any surplus funds provided to
24 implement the home-generated sharps stewardship program be
25 used only to implement the program.

26 (5) Coordinate the home-generated sharps stewardship program
27 with existing local medical waste collection programs, to the extent
28 this requirement is reasonably feasible and mutually agreeable by
29 those programs.

30 (6) Programs to reduce the number of postconsumer sharps that
31 are illegally disposed of, and to maximize the proper end-of-life
32 management of home-generated sharps, including the collection
33 of home-generated sharps, as practical, based on current medical
34 waste program information.

35 (7) Education and outreach efforts for consumers, the medical
36 community, and retailers that would promote the collection of
37 home-generated sharps. This information may include, but is not
38 limited to, developing, and updating as necessary, educational and
39 other outreach materials aimed at all retailers and distributors of
40 home-generated sharps. These materials shall be made available

1 to those parties and may include, but are not limited to, one or
2 more of the following:

3 (A) Signage that is prominently displayed and easily visible to
4 the consumer.

5 (B) Written materials and templates of materials for reproduction
6 by retailers to be provided to the consumer at the time of purchase
7 or delivery, or both. These written materials shall include
8 information on the prohibition of the improper disposal of
9 home-generated sharps.

10 (C) Advertising or other promotional materials, or both, that
11 include references to home-generated sharps collection
12 opportunities and the prohibition on the improper disposal of
13 home-generated sharps.

14 (8) Methods for demonstrating to the department that the
15 program implemented pursuant to the plan achieves the maximum
16 improvement possible in achieving the minimum collection rate.

17 (9) The establishment of at least one home-generated sharps
18 collection point in every county in the state, but no less than one
19 home-generated sharps collection point for every 5,000 people in
20 the state.

21 47119. A retailer may voluntarily participate as a
22 home-generated sharps collection point pursuant to the
23 home-generated sharps stewardship program.

24 47120. On or before January 1, 2018, the department shall
25 consult with producers, stewardship organizations, local
26 government, solid waste haulers, the health community, and all
27 other stakeholders regarding the program performance. The
28 department shall set a fair and reasonable minimum collection rate
29 for the 2018 calendar year and for each subsequent calendar year
30 to achieve the goal of safely managing all home-generated sharps
31 in this state.

32 47121. (a) The department shall review a home-generated
33 sharps stewardship plan submitted pursuant to Section 47118 within
34 90 days of receipt. The department shall approve the plan if the
35 department determines the plan provides for the establishment of
36 a home-generated sharps stewardship program that meets the
37 requirements of Section 47118. If the department does not approve
38 the plan, the department shall allow the producer or stewardship
39 organization to resubmit the plan within 90 days after receiving
40 notice of disapproval from the department.

(b) (1) The approved plan shall be a public record, except that financial, production, or sales data reported to the department by a producer or by the stewardship organization is not a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall not be open to public inspection.

(2) Notwithstanding paragraph (1), the department may release a summary form of financial, production, or sales data if the department does not disclose financial, production, or sales data of a producer or stewardship organization.

(c) On or before _____, or three months after a plan is approved pursuant to subdivision (a), whichever is later, but no later than January 1, 2016, the producer or stewardship organization shall implement the home-generated sharps stewardship program described in the approved plan.

47122. (a) (1) On January 1, 2016, or upon the date the first plan is approved, whichever is earlier, the department shall post on its Internet Web site a list of producers for which the department has approved a plan pursuant to subdivision (a) of Section 42121. The department shall update this posting no less than once every six months thereafter.

(2) On and after July 1, 2016, the department shall post a notice on its Internet Web site listing producers that are in compliance with this article and shall update this posting no less than once every six months.

(b) A producer that is not listed on the department's Internet Web site pursuant to this section, but that demonstrates to the satisfaction of the department that it is in compliance with this chapter before the next notice is required to be posted pursuant to this section, may request a certification letter from the department stating that the producer is in compliance. The producer who receives that letter shall be deemed to be in compliance with this chapter.

(c) A wholesaler, health facility, as defined in Section 1250 of the Health and Safety Code, retailer, or other distributor that distributes or sells home-generated sharps shall monitor the department's Internet Web site to determine if the sale of a producer's home-generated sharps is in compliance with this chapter.

1 47123. On or before April 1, 2017, and every subsequent year
2 thereafter, each producer or sharps stewardship organization
3 implementing a plan shall prepare and submit to the department
4 an annual report describing the activities carried out pursuant to
5 the plan during the previous calendar year, commencing with the
6 2016 calendar year. The annual report shall include, but is not
7 limited to, all of the following elements:

8 (a) The number of home-generated sharps collected by the
9 program in the previous calendar year and the collection rate
10 achieved in the previous calendar year.

11 (b) A report of the total sales data for sharps sold to distributors
12 in the state for the previous calendar year.

13 (c) A report on the feedback from a stakeholders' meeting, that
14 shall be hosted by the producers subject to the plan and made
15 available by Webcast, prior to submittal of the annual report.

16 (d) Independently audited financial statements that detail the
17 financing method selected to sustainably fund the implementation
18 of the plan to achieve the minimum collection rates described in
19 the plan, pursuant to paragraph (3) of subdivision (c) of Section
20 47118.

21 (e) Examples and descriptions of educational materials
22 distributed to various stakeholders aimed at increasing collection.

23 (f) An evaluation of the effectiveness of the program specific
24 to collection, public awareness, convenience, and reduced improper
25 disposal associated with both legal and illegal drug use.

26 (g) Any programmatic changes the producer or the stewardship
27 organization recommends based on new data provided in the report.

28 (h) The location, hours, and contact information for all
29 home-generated sharps collection points established pursuant to
30 the plan, including a certification that this information is accurate,
31 that a home-generated sharps collection point has been established
32 in every county in the state, and that the number of home-generated
33 sharps collection points is equal to at least one for every 5,000
34 people in the state.

35 47124. (a) The department shall review the annual report
36 submitted pursuant to Section 47123, including reviewing the
37 accuracy of the list of home-generated sharps collection points
38 that are certified to be established pursuant to the plan, and the
39 data used to determine the collection rate, including sales and
40 collection data. The department shall also determine whether all

1 of the elements specified in ~~subdivision~~ *subdivisions* (a) to (h),
2 inclusive, of Section 47123 are included in the report.

3 (b) If the annual report does not demonstrate that the program
4 has achieved a collection rate increase of ____ percent, the
5 department may require the program to take additional actions
6 with regard to improving and increasing the number of
7 home-generated sharps collection points, ensuring accessibility to
8 those points, and providing additional education and outreach
9 activities.

10 (c) If the department does not disapprove a report within 45
11 days of receipt, the report shall be deemed approved by the
12 department.

13 (d) The department shall make all reports submitted to the
14 department pursuant to this section available to the public on the
15 department's Internet Web site.

16 47125. If the department determines that the collection rate for
17 the home-generated sharps subject to a plan meets 95 percent, the
18 department may exempt a producer or stewardship organization
19 from any or all of the elements required to be included in the annual
20 report specified in Section 47123.

21 47126. (a) A producer or stewardship organization submitting
22 a plan to the department shall pay the department an annual
23 administrative fee pursuant to subdivision (b).

24 (b) The department shall impose the annual fee in an amount
25 that is sufficient to cover the department's full costs of
26 administering and enforcing this article, including any program
27 development costs or regulatory costs incurred by the department
28 prior to the submittal of the plan. The department shall deposit the
29 fees in the Safe Sharps Disposal Account, which is hereby
30 established in the Integrated Waste Management Fund. The
31 department may expend the moneys in the Safe Sharps Disposal
32 Account, upon appropriation by the Legislature, to administer and
33 enforce this article.

34 47127. (a) The department shall enforce this article and may
35 impose an administrative civil penalty on a person who violates
36 this article in an amount of up to one thousand dollars (\$1,000)
37 per violation per day.

38 (b) The department may impose an administrative civil penalty
39 on a person who intentionally, knowingly, or negligently violates

1 this article in an amount of up to ten thousand dollars (\$10,000)
2 per violation per day.

3 (c) (1) The department may impose the civil penalty specified
4 in subdivision (a) or (b) on a producer or stewardship organization
5 for which the annual report submitted does not demonstrate that
6 the ____ *percent* minimum collection rate has been achieved. In
7 lieu of imposing a civil penalty, the department may require a
8 producer or stewardship organization to take additional actions to
9 comply with this article.

10 (2) In assessing a penalty pursuant to this subdivision on a
11 producer or stewardship organization, the department shall consider
12 any exigent circumstance that contributed to the producer or
13 stewardship organization not meeting the required minimum
14 collection rate.

15 (d) The department shall deposit all penalties collected pursuant
16 to this section into the Safe Sharps Disposal Penalty Account,
17 which is hereby created in the Integrated Waste Management Fund.
18 Upon appropriation by the Legislature, moneys deposited into the
19 Safe Sharps Disposal Penalty Account may be expended by the
20 department to enforce this article.

21 ~~47128. (a) A producer who is subject to an approved plan and~~
22 ~~in compliance with this article may bring a civil action to recover~~
23 ~~costs, damages, and fees, as specified in subdivision (c), from~~
24 ~~another producer for failure to comply with this article.~~

25 ~~(b) An action under this section may be brought against one or~~
26 ~~more producers who is not in compliance with this article, except~~
27 ~~an action shall not be commenced under either of the following~~
28 ~~circumstances:~~

29 ~~(1) No earlier than 60 days after a written notice of the~~
30 ~~producer's intention to file an action has been provided to the~~
31 ~~department and to the producer who is alleged to be noncompliant.~~

32 ~~(2) If the department has commenced an enforcement action~~
33 ~~against the producer who is alleged to be noncompliant and is~~
34 ~~diligently pursuing that action.~~

35 ~~(c) In an action under this section, the plaintiff may recover~~
36 ~~from a producer who has been found to be noncompliant all of the~~
37 ~~following:~~

38 ~~(1) The costs the plaintiff incurred in collecting, handling,~~
39 ~~recycling, or properly disposing of home-generated sharps~~

1 reasonably identified as having originated from the noncompliant
2 producer.

3 ~~(2) An amount of damages equal to no more than three times~~
4 ~~those costs specified in paragraph (1).~~

5 ~~(3) The plaintiff's attorney's fees and costs of bringing the~~
6 ~~action.~~

7 ~~(d) An action to recover the costs specified in this section may~~
8 ~~be brought in any court in the state, without regard to the amount~~
9 ~~in dispute.~~

10 47129. (a) Except as provided in subdivision (c), an action
11 solely to increase the collection of home-generated sharps by a
12 producer, stewardship organization, or retailer that affects the types
13 or quantities being collected, or the cost and structure of any
14 program implementing a stewardship plan, is not a violation of
15 the statutes specified in subdivision (b).

16 (b) The following statutes are not violated by an action specified
17 in subdivision (a):

18 (1) The Cartwright Act (Chapter 2 (commencing with Section
19 16700) of Part 2 of Division 7 of the Business and Professions
20 Code).

21 (2) The Unfair Practices Act (Chapter 4 (commencing with
22 Section 17000) of Part 2 of Division 7 of the Business and
23 Professions Code).

24 (c) Subdivision (a) shall not apply to any agreement establishing
25 or affecting the price of home-generated sharps or the output or
26 production of home-generated sharps, or any agreement restricting
27 the geographic area or customers to which home-generated sharps
28 will be sold.